



OFFICIAL FILE

ORIGINAL

# Illinois Department of Transportation

Division of Aeronautics

1 Langhorne Bond Drive / Capital Airport / Springfield, Illinois / 62707-8415

July 31, 2002

Ms. Donna M. Caton  
Chief Clerk  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701

Re: Comment on proposed rulemaking; ILCC Docket No. 02-0252  
83 Ill. Adm. Code 305.20

Dear Ms Caton:

This Department has received "Comments of the Staff of the Illinois Commerce Commission" filed on July 17<sup>th</sup>. Please allow me to respond to those Comments:

1. Item #1 states that "IDOT's comments are outside of the scope of the Commission's Order in 02-0252." Because the Notice of Proposed Rulemaking filed by the Commission in the April 26<sup>th</sup> issue of the Illinois Register neither identifies the Commission's Order in 02-0252 nor describes what that order encompasses, it is not clear what Item #1 means. Would the Commission please explain how IDOT comments do not fit into the scope of its order and why this is important?
2. Although the 2002 edition of NESC C-2 does not specify how much distance should be maintained between utility lines and aircraft runways, that publication does specify what minimum distance is allowable between utility lines and other features. The legal maxim "The expression of one is the exclusion of others" would imply that the only minimum distance requirements for utility lines are those that are specified and that there are no minimum distance requirements between utility lines and runways. Surely, the Commission does not mean to give this impression. Language, such as that offered by IDOT, would make it clear that utility lines must not be placed too close to runways.
3. Item #3 incorrectly states that FAA construction requirements "cover IDOT's requested amendment topics." This misconception is continued in the penultimate paragraph on page 3 of the Comments of the Staff. The Federal Aviation Administration does not have any rules pertaining to construction outside of an airport. In Part 77 of its regulations (14 CFR Part 77), FAA does state what clearances must be maintained for runways. If an obstruction (e.g., a power or communication line) were erected so that the required clearances were no longer maintained, then the airport owner – not the utility – would be required to make an adjustment by shortening the effective length of the runway or by closing the runway altogether. A shortened runway would essentially rob taxpayers of their investment in that structure and could compromise the safety of airport users. These are the very consequences IDOT hopes to avoid by asking ILCC to amend its proposed rulemaking.
4. Item #4 suggests that it would take "extensive effort" for the Commission to adopt any or all of IDOT's ideas. Very little effort should be necessary because IDOT has already offered draft language that could easily be adopted. Besides, the Commission should be willing to expend effort as part of its statutory duty under §8-505 of the Public Utilities Act to promote health and safety of persons that might be impacted by its rules.

CHIEF CLERK'S OFFICE

Aug 13 12 55 PM '02  
ILLINOIS  
COMMERCE COMMISSION

5. Also in Item #4 and in the ultimate paragraph on page 2 of the Comments of the Staff, it is recommended that IDOT's concerns should be addressed, if at all, outside the rulemaking process. No explanation is given why these concerns should not be handled now. Will the users of airports that might be harmed by utility lines understand that, somehow, this rulemaking was limited? The Commission has opened the door to utility line location standards. It cannot close that door now that a sister agency is requesting that those standards be addressed.

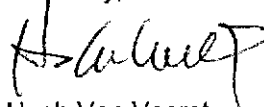
The issue is ripe and is very germane to the present rulemaking. Absent compelling justification for avoiding the issue, it should be addressed and resolved now. If this means that the staffs of the Commission and of IDOT need to work harder, then that is what should be done.

6. Toward the bottom of page 2 of the Comments of the Staff, mention is made of the possibility that IDOT's concerns should be addressed by IDOT regulations. To the extent that it has power to promulgate such regulations, IDOT has done so. Unfortunately, IDOT does not have the authority to protect all airports, heliports, and restricted landing areas. Fortunately, ILCC does have authority to regulate placement of all utility lines. This means only this Commission is able to protect the safety of users of airports where IDOT does not have hazard zoning authority.

Even for those airports protected by IDOT rules, an additional, similar rule by this Commission would be helpful. As everyone who has researched statutes and regulations has found, it is difficult to find every law that might impact one's area of interest. It might not be intuitively obvious to a utility company that it needed to read IDOT's aviation rules when planning the location of a line. There was a recent situation near Pittsfield when this very problem arose. Because of the difficulty of finding all pertinent regulations, it may be helpful to have cross-references included in the regulations. For these reasons, it is important that this issue be addressed in Illinois Commerce Commission regulations. The safety of the public demands no less.

In light of the discussion above, Illinois Department of Transportation respectfully requests that this Commission consider airport / heliport / restricted landing area safety concerns when promulgating regulations relating to the location of above-ground utility lines. IDOT is eager to work with ILCC in the formation of mutually satisfactory regulatory language.

Sincerely,



Hugh Van Voorst  
Director

- c: Conrad S. Rubinkowski, Esq.  
Joint Committee on Administrative Rules